

# TOWNSHIP OF MARLBORO

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December 22, 2008

Lucy Vandenberg, Executive Director  
Council on Affordable Housing  
101 South Broad Street  
Trenton, New Jersey 08625

**Re: Marlboro Township Petition For Substantive Certification**

Dear Ms. Vandenberg:

On this day Marlboro Township is submitting its Housing Element and Fair Share Plan to COAH for review. What follows this filing is a determination as to whether or not our plan is in accordance with the substantive and procedural rules promulgated by COAH as well as New Jersey's Fair Housing Act. As you are aware, a deadline to file petitions for substantive certification like this one have been set for December 31, 2008. Efforts to relax this deadline, to allow for reflection on the proper manner in which to address Mount Laurel concerns, have been rejected.

However, despite this filing, as Mayor of Marlboro, I am compelled to voice my deep concern, displeasure, and frustration over the COAH process and the conditions upon which Marlboro must file its plan. My reasons follow.

First, the obligations imposed on Marlboro, in terms of affordable housing units which must be planned for, are unreasonable and outrageous. The "anticipated" growth which Marlboro must account for is substantially in excess of any prudent number of homes which the Township's infrastructure, open space, schools, and amenities, can reasonably support.

Similarly, our job growth projections are entirely above what I have experienced in my tenure as a life long resident of the township. Thus, the projection for commercial development is entirely unrealistic and not in tune with the history of development in this township. Moreover, the state of the national economy is getting worse by the day and it is need of substantial rehabilitation and financial assistance. People are losing their homes, their jobs, and their savings. To project the numbers that Marlboro has to plan for, without

accounting for any of these contingencies while using scientific methodologies which have no connection to practical or regional realities, is beyond the realm of good planning. Instead, it is a reckless determination to achieve a goal at any cost and to trample the rights of municipal governments to govern.

Second, Marlboro is constrained to petition at a time where the legal rules relating to the Mount Laurel doctrine are anything but certain, predictable, or on solid ground. These rules have become a moving target. In July of this year, the Legislature suddenly acted to change the Fair Housing Act (through A500) without concern or regard for the rights of many municipalities including Marlboro. Just prior to A500, COAH itself was publishing new rules at the same time that it was proposing amendments to these very same rules. Furthermore, throughout this entire process one lawsuit after another has been filed challenging the COAH rules with these lawsuits now pending in the Appellate Division. Marlboro is being asked to petition before the matters have even been briefed. There is no historical perspective from which I can draw to compare to the confused and bewildered state of the law relating to the current Mount Laurel doctrine. Never before has our law required such an expenditure of taxpayer money, time and energy, when the applicable legal rules are anything but certain. Again, submitting a petition under these conditions and circumstances shocks the municipal conscience and is a deep concern to my administration and our taxpayers.

Third, along a similar vein, Marlboro and the City of Trenton have for years negotiated and relied upon an RCA agreement which would send \$8.3 million dollars to Trenton to help construct much needed affordable housing in our region. This agreement dates back to July 1, 2004, which is over four (4) years ago. The agreement embodying this RCA went before COAH less than one month after it was entered into. When Marlboro petitioned again in December of 2005, this RCA was front and center in the Township's then petition. Subsequently, both municipalities have continually relied on the agreement, recently (in 2008) both municipalities have reaffirmed their desire to move forward with the RCA, and, both have continually planned for its viability. Marlboro has even obtained the Mercer County Planning Board's approval for the RCA and Trenton has produced a project plan as to how the funds will be spent to assist in the completion of regional affordable housing projects. Furthermore, the funds needed for this RCA are in Marlboro's housing trust fund and this RCA can be funded without any assistance from any federal, state or local authority, an attribute that cannot be overlooked in a nation which has recently become accustomed to government bailouts. Yet, despite the above facts, and the fact that Marlboro has collected funds for years planning for this RCA, and the fact that municipalities have been able to plan for RCA agreements for over twenty (20) years, Marlboro was told just five (5) months ago to scrap any plans for the RCA and find another alternative. In essence, Marlboro has to reverse direction after years of planning and reliance. In my experience, governments were not designed to operate in that fashion. It is patently unfair to expect governments to abandon long term plans and simply "rethink" their situation especially in a five (5) month period. Yet, this is what Marlboro has been told it has to do. To petition under these circumstances without the ability to rely on the Marlboro-Trenton RCA is

unconscionable. A500's affect on municipalities cannot be underestimated and as such, it is unfair to the citizens of both municipalities (Marlboro and Trenton) to simply void such agreements in midstream without any grandfathering mechanism being provided. It is not good government and in these times, it is fiscally irresponsible.

In sum, I do believe that the COAH process is anything but voluntary. When compared to a builders' remedy lawsuit, the COAH process becomes the lesser of two evils. This Township has historically encountered problems and lost planning control because of builders' remedy lawsuits therefore, I cannot in good conscience ask Marlboro to "take its chances" and not petition COAH. However, as Mayor, I must honestly and realistically assess the state of affairs associated with "voluntarily" participating in the COAH process and I would be remiss in my accountability to my constituents if I did not voice the concerns that Marlboro has with the current state of the law and the COAH process. Accordingly, Marlboro is filing this petition under protest for the foregoing reasons.

It is my hope that in the near future that the "fairness" in the Fair Housing Act returns to the municipal and legal landscape.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan L. Hornik". The signature is fluid and cursive, with the first name "Jonathan" being more prominent and the last name "Hornik" following in a similar style.

Jonathan L. Hornik,  
Mayor

CC: Honorable Governor Jon S. Corzine  
Honorable Senator Richard Codey  
Honorable Senator Raymond J. Lesniak  
Honorable Assemblyman Joe Cryan  
Honorable Commissioner Joe Doria